

EX PARTE OR LATE FILED

October 2, 2002

BY HAND

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RECEIVED

OCT - 2 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL

Re: *Ex Parte* Presentation in CS Docket No. 02-70

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, the Broadband Service Providers Association ("BSPA") submits this notice of an *ex parte* presentation in the above-captioned proceeding.

On October 1, 2002, John D. Goodman (Executive Director, BSPA), Deborah Royster (General Counsel, Starpower Communications) and I met with James R. Bird, Nandan Joshi, and Kimberly Reindl of the Office of General Counsel; Royce Sherlock, Roger Holberg, John Scott, and Patrick Webre of the Media Bureau; and Simon Wilkie of the Office of Plans and Policy, to discuss the potential anticompetitive effects of the proposed merger of Comcast Corporation and AT&T Broadband.

At the meeting, we discussed and provided a copy of the attached map, which represents the franchise territories of owned and operated and consolidated cable systems of Comcast and AT&T Broadband, and our best presentation based on available data of other "non-consolidated" systems in which AT&T has an attributable interest.¹ BSPA believes that inclusion of the territories covered by the AT&T "non-consolidated" systems is relevant to the Commission's analysis of the competitive effects of the proposed merger, particularly as it relates to the potential exercise of market power and strategic abuses flowing from the increased regional consolidation and clustering resulting from the proposed merger. We also ask that the Commission require Comcast and AT&T to provide complete documentation and clarification of their respective holdings and the effected franchise territories, so that the Commission may

¹ The blue circles represent functioning systems operated by BSPA members. The green circles represent areas in which BSPA members have the current opportunity to build based on awarded franchises. The identification of AT&T non-consolidated systems is based on Appendix 7 to the parties' joint application in the captioned proceeding.

No. of Copies rec'd 042
List ABCDE

Ms. Marlene H. Dortch
October 2, 2002
Page 2

analyze the impact of the proposed transaction on overall clustering and reach, and the merged entity's market power.

After reviewing the attached map, we also discussed how the merger, if approved without conditions, would result in an increase in the frequency and/or severity of discriminatory pricing practices directed at BSPA members through the secret and selective targeting of BSPA member customers. We also discussed how the vertical integration and market power of the merged company would be used to further constrict BSPA members' access to critical programming, especially programming delivered utilizing new technologies.

Respectfully submitted,

**BROADBAND SERVICE PROVIDERS
ASSOCIATION**

By: 

Martin L. Stern
Preston Gates Ellis &
Rouvelas Meeds LLP
1735 New York Ave., NW, Suite 500
Washington, DC 20006
(202) 628-1700
*Attorneys for the Broadband Service
Providers Association*

Attachment

cc: FCC attendees (w/out attachment, by electronic mail)

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

- An oversize page or document (such as a map) which was too large to be scanned into the ECFS system.
 - o Microfilm, microform, certain photographs or videotape.
 - o Other materials which, for one reason or another, could not be scanned into the ECFS system.

The actual document, page(s) or materials may be reviewed by contacting an Information Technician at the FCC Reference Information Center, at 445 12th Street, SW, Washington, DC, Room CY-A257. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician.

1 MAP